

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1905

No. 597

JAMES E. MILLS, APPELLANT,

OR,

ALABAMA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA.

FILED SEPTEMBER 21, 1905

SUBSCRIPTION POSTPONED DECEMBER 1, 1905

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 597

JAMES E. MILLS, APPELLANT,

vs.

ALABAMA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

INDEX

Original Print

Record from the Jefferson County Criminal Court, State of Alabama		
Organization of Court	1	1
Complaint	2	1
Warrant of arrest	4	4
Amendment to complaint	5	5
Motion to dismiss and quash	8	9
Demurrers of defendant	11	10
Judgment entry	20	19
Citation of appeal to the Supreme Court of Ala- bama	20	20
Assignment of error	22	21
Clerk's certificate	24	22

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JANUARY 4, 1966

	Original	Print
Proceedings in the Supreme Court of the State of Alabama	25	23
Argument and submission	25	23
Opinion, Livingston, Ch. J.	26	24
Judgment	40	34
Application for rehearing	41	35
Certificate of recall, March 18, 1965	44a	37
Order overruling application for rehearing	45	38
Notice of appeal to the Supreme Court of the United States	46	38
Recall of mandate and certificate by the Supreme Court of Alabama, dated July 21, 1965	50	41
Clerk's certificate (omitted in printing)	51	42
Order postponing jurisdiction	52	42

[fol. 1]

**IN THE JEFFERSON COUNTY CRIMINAL COURT,
STATE OF ALABAMA**

State of Alabama
Jefferson County

ORGANIZATION OF COURT

At a regular, adjourned or special session of the Jefferson County Criminal Court, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled:

STATE OF ALABAMA, Plaintiff,

vs.

JAMES E. MILLS, Defendant.

[fol. 2]

IN THE JEFFERSON COUNTY CRIMINAL COURT

COMPLAINT—Filed November 13, 1962

Personally appeared before the undersigned as Ex-Officio Judge of the Jefferson County Criminal Court, of Jefferson County, in and for said County, Grady Williams, who being duly sworn, says that James E. Mills, whose name is otherwise unknown to affiant, within twelve months before making this affidavit, in said County, did in violation of Title 17, Section 285 of the Code of Alabama of 1940, which said section reads as follows:

“It is a corrupt practice for any person on any election day to intimidate or attempt to intimidate an elector or any of the election officers; or obstruct or hinder or attempt to obstruct or hinder, or prevent or attempt to prevent the forming of the lines of the voters awaiting their opportunity or time to enter the election

booths; or to hire or let for hire any automobile or other conveyance for the purpose of conveying electors to and from the polls; or, to do any electioneering or to solicit any votes or to promise to cast any votes for or against the election or nomination of any candidate, or in support of or in opposition to any proposition that is being voted on on the day on which the election affecting such candidates or propositions is being held."

on, to-wit the 6th day of November 1962, an election day in the County of Jefferson, State of Alabama, and in the City of Birmingham, Jefferson County, Alabama, did electioneer or solicit votes for and in support of a proposition that was being voted on on said date at such election, which said election affected such proposition, said proposition being the change of the form of the City government of the City of Birmingham from the then existing City Commission form of government to a Mayor-Council form of government in and for the said City of Birmingham, Alabama, said soliciting or electioneering in favor of said change of said form of government being done by publishing or causing to be published by the said James E. Mills in the Birmingham Post Herald, a newspaper of general [fol. 3] circulation in the City of Birmingham, Jefferson County, Alabama, the following editorial or writing:

"Do We Need Further Warning?

"Mayor Hanes' proposal to buy the votes of city employees with a promise of pay raises which would cost the taxpayers nearly a million dollars a year was enough to destroy any confidence the public might have had left in him.

"It was another good reason why the voters should vote overwhelmingly today in favor of Mayor-Council government.

"Now Mr. Hanes, in his arrogance, proposes to set himself up as news censor at City Hall and "win or

lose" today he says he will instruct all city employees under him to neither give out news regarding the public business with which they are entrusted nor to discuss it with reporters either from the Post-Herald or the News.

"In other words, it is Mr. Hanes' plan to give to the people of Birmingham only the news he wants them to have and only in the light in which he sees fit to present it.

"The mayor makes a mistake, however, if he thinks he can black out news from City Hall. He is mistaken, too, if he thinks the citizens of Birmingham will let him get away with so brazen an attempt to deny them ready access to what they have a right to know about all that goes on at City Hall.

"Do the people of Birmingham need a more serious warning?

"If Mayor Hanes displays such arrogant disregard of the public's right to know on the eve of the election what can we expect in the future if the City Commission should be retained?

"Let's take no chances.

"Birmingham and the people of Birmingham deserve a better break. A vote for Mayor-Council government will give it to them."

and said James E. Mills distributed or caused to be distributed copies of said newspaper wherein was printed the said writing or editorial to the general public in the City of Birmingham, Jefferson County, Alabama, with the intent to cause the voters among said general public to vote in favor of the proposed change of said city government of the City of Birmingham, Alabama, to the Mayor-Council [fol. 4] form of government, a proposition being voted upon in said election on said election day, to-wit: the 6th

day of November 1962, against the peace and dignity of the State of Alabama.

Grady Williams

Subscribed and sworn to before)
me this 13 day of November 1962)

J. C. Esco, Ex-Officio Judge of the Jefferson County Criminal Court.

IN THE JEFFERSON COUNTY CRIMINAL COURT

WARRANT OF ARREST—November 13, 1962

The State of Alabama

Jefferson County

To Any Lawful Officer of Said County, Greeting.

You are hereby commanded to arrest James E. Mills and bring him before the Judge of the Jefferson County Criminal Court, at the present term of said Court, to answer the State of Alabama of a charge of Violation of Title 17, Section 285 of the Code of Alabama of 1940, preferred by Grady Williams.

Witness my hand this 13 day of November 1962.

J. C. Esco, Ex-Officio Judge of the Jefferson County Criminal Court.

No. 53975

The State of Alabama

Jefferson County

Jefferson County Criminal Court

Present Term, 1962

THE STATE OF ALABAMA

vs.

JAMES E. MILLS

WARRANT OF ARREST

The Officer arresting, may admit the defendant to bail upon his entering into bond in the sum of One Hundred Dollars approved by said officer.

J. C. Esco, Ex-Officio Judge, Jefferson County Criminal Court.

Defendant lives: 2940 Canterbury Road. Works: Birmingham Post Herald.

FRANCIS THOMPSON, Judge of Jefferson County Criminal Court.

[fol. 5]

IN THE JEFFERSON COUNTY CRIMINAL COURT

No. 53975

[Title omitted]

AMENDMENT TO COMPLAINT—Filed November 28, 1962

Now comes the State of Alabama, acting by and through its Circuit Solicitor, Emmett Perry, as Circuit Solicitor in

[File endorsement omitted]

and for the Tenth Judicial Circuit of Alabama, and amends the Complaint filed herein by substituting for the Complaint as originally filed the following words and figures as such Complaint:

Count II

Complaint

The State of Alabama)
Jefferson County)

In the Jefferson County Criminal Court

Personally appeared before the undersigned as Ex-Officio Judge of the Jefferson County Criminal Court of Jefferson County, in and for said county, Grady Williams, who being duly sworn, says that James E. Mills, whose name is otherwise unknown to affiant, within twelve months before making this affidavit, in said County, did in violation of Title 17, Section 285 of the Code of Alabama of 1940, which said section reads as follows:

“It is a corrupt practice for any person on any election day to intimidate an elector or any of the election officers; or, obstruct or hinder or attempt to obstruct or hinder, or prevent or attempt to prevent the forming of the lines of the voters awaiting their opportunity or time to enter the election booths; or to hire or to let for hire any automobile or other conveyance for the purpose of conveying electors to and from the polls; or, to do any electioneering or to solicit any votes or to promise to cast any votes for or against the election or nomination of any candidate, or in support of or in opposition to any proposition that is being voted on on the day on which the election affecting such candidates or propositions is being held.”

[fol. 6] on to-wit, the 6th day of November, 1962, an election day in the County of Jefferson, State of Alabama, and in the City of Birmingham, Jefferson County, Alabama, did electioneer or solicit votes for and in support of a proposition that was being voted on on said date at said

election, which said election affected such proposition, said proposition being the change of the form of the City government of the City of Birmingham from the then existing City Commission form of government to a Mayor-Council form of government, as provided in the Mayor-Council Act of 1955, which said Act is Act No. 452 of the legislature of Alabama, set forth in the Acts of the Legislature of Alabama of 1955, Vol. II, Organizational, Special and Regular Sessions, at page 1004, through page 1039, inclusive, or a change of the form of government of the City of Birmingham from the then existing City Commission form of government to a Council-Manager form of government or Mayor-Council form of government, as provided in the Act of the Legislature of Alabama of 1955, which said Act is Act No. 434 of the Legislature of Alabama, set forth in the Acts of the Legislature of Alabama of 1955, Vol. II, Organizational, Special and Regular Sessions at page 980, through page 981, inclusive, said soliciting or electioneering in favor of said change of said commission form of government to said Mayor-Council form of government being done by publishing or causing to be published by the said James E. Mills in the Birmingham Post Herald, a newspaper of general circulation in the City of Birmingham, Jefferson County, Alabama, the following editorial or writing:

"Do We Need Further Warning?"

"Mayor Hanes' proposal to buy the votes of City employees with a promise of pay raises which would cost the taxpayers nearly a million dollars a year was cause enough to destroy any confidence the public might have had left in him.

"It was another good reason why the voters should vote overwhelmingly today in favor of Mayor-Council government.

"Now Mr. Hanes, in his arrogance, proposes to set himself up as news censor at City Hall and "Win or lose" today he says he will instruct all city employees [fol. 7] under him to neither give out news regarding the public business with which they are entrusted nor

to discuss it with reporters either from the Post Herald or the News.

"The mayor makes a mistake, however, if he thinks he can black out news from City Hall. He is mistaken, too, if he thinks the citizens of Birmingham will let him get away with so brazen an attempt to deny them ready access to what they have a right to know about all that goes on at City Hall.

"Do the people of Birmingham need a more serious warning?

"If Mayor Hanes displays such arrogant disregard of the public's right to know on the eve of the election what can we expect in the future if the City Commission should be retained?

"Let's take no chances.

"Birmingham and the people of Birmingham deserve a better break. A vote for Mayor-Council government will give it to them."

and said James E. Mills distributed or caused to be distributed on said election day, on to-wit: November 6, 1962, copies of said newspaper wherein was printed the said writing or editorial to the general public in the City of Birmingham, Jefferson County, Alabama, with the intent to cause the voters among said general public to vote in favor of the proposed change of said commission form of city government of the City of Birmingham, Alabama, to the said proposed Mayor-Council form of government, a proposition being voted upon in said election on said election day, to-wit: the 6th day of November, 1962, against the peace and dignity of the State of Alabama.

Grady Williams

Subscribed and sworn to before me this 28th day of November, 1962.

J. C. Esco, Ex-Officio Judge of the Jefferson County Criminal Court.

Emmett Perry, Circuit Solicitor, Tenth Judicial Circuit of Alabama.

[fol. 8]

IN THE JEFFERSON COUNTY CRIMINAL COURT

[Title omitted]

MOTION TO DISMISS AND QUASH—Filed November 28, 1962

Comes the defendant, James E. Mills, by his attorney, and moves the Court that the complaint and affidavit as last amended filed in said proceedings be quashed and the case against the defendant dismissed, and for grounds for said motion sets down, separately and severally, the following:

1. The statute upon which the complaint is founded is unconstitutional and void, in that it infringes and is in violation of the freedom of speech and press guaranteed by the Bill of Rights of the State of Alabama, Article I, Section 4.

2. The statute upon which the complaint is founded is void, in that it seeks to deprive the defendant of his liberty without due process of law, as guaranteed by Article I, Section 6, of the Bill of Rights of the State of Alabama.

3. The statute upon which the complaint is founded is void, in that it contravenes the rights of all persons regarding freedom of speech and press and assembly, guaranteed by the First Amendment of the United States Constitution.

4. The statute upon which the complaint is founded is void, in that it seeks to deprive the defendant of his liberty without due process of law, as guaranteed by the Fourteenth Amendment of the United States Constitution.

5. The statute upon which the complaint is founded is unconstitutional and void, in that it fails to define with sufficient certainty what act, if any, constitutes solicitation or electioneering on election day, so that a reasonable man

[File endorsement omitted]

might know what act, if any constitutes a crime as to be a violation of the statute, and that portion of said statute [fol. 9] being so vague and indefinite and uncertain is unconstitutional and void as depriving the defendant of the rights guaranteed under the Fourteenth Amendment of the Constitution of the United States.

6. The statute upon which the complaint is founded is unconstitutional and void, as being too broad and indefinite in scope, in that solicitation or electioneering on election day does not appear to be such an act that would incite a riot, breach the peace, corrupt the purity of the election, and promote the safety of the public; that on the contrary, said statute attempts to exceed the authority of the legislature to abridge the freedom of speech, press and assembly guaranteed by the Constitution of the State of Alabama and the Constitution of the United States.

7. That that portion of Title 17, Section 285, of the Code of Alabama of 1940, which seeks to abridge or restrain the freedom of speech or press on election day, is unconstitutional, null and void, and that under the facts averred in this case, comprises an unconstitutional deprivation of the rights of the defendant to freedom of expression as guaranteed by the Constitutions of the State of Alabama and of the United States.

Kenneth Perrine, Attorney for Defendant.

Leader, Tenenbaum, Perrine & Swedlaw, 933 Bank for Savings Building, Birmingham, Alabama.

[fol. 11]

IN THE JEFFERSON COUNTY CRIMINAL COURT

DEMURRERS OF DEFENDANT—Filed November 28, 1962

Comes the defendant, James E. Mills, and demurs to the complaint, affidavit and warrant, as last amended, issued

[File endorsement omitted]

out of the Jefferson County Criminal Court of Jefferson County, Alabama, and for grounds for said demurrers sets down, separately and severally to each paragraph of the complaint and warrant and affidavit, as last amended, separately and severally, the following:

1. For that the statute upon which the complaint is founded is void and unconstitutional, in violation of the Constitution of the State of Alabama, Article I, Section 4.

2. For that the statute upon which the complaint is founded is void and unconstitutional, in violation of the First and Fourteenth Amendments of the Constitution of the United States.

3. That the statute upon which the complaint is founded is unconstitutional and void for uncertainty, in violation of the First and Fourteenth Amendments of the Constitution of the United States, and Article I, Sections 4 and 6, of the Constitution of the State of Alabama.

4. For that it affirmatively appears that the statute upon which the complaint is based is unconstitutional and void, in violation of Article I, Section 4, of the Constitution of the State of Alabama.

5. The statute upon which the complaint is founded is unconstitutional and void as to indefiniteness as applied to political purposes beyond the control of the Legislature and in violation of the rights guaranteed by the First and Fourteenth Amendments of the Constitution of the United States and Article I, Sections 4 and 6, of the Constitution of the State of Alabama.

[fol. 12] 6. The application of the statute upon the facts set forth in this complaint and upon which the complaint is founded is unconstitutional in violation of the Constitution of the State of Alabama, Article I, Section 4, and is contrary to public policy in the prohibition of free speech and undue restraint on the press, when no present danger to public safety exists.

7. It affirmatively appears from the complaint that the statute, Title 17, Section 285, Code of Alabama 1940, seeks to abridge or restrict freedom of speech on election day in violation of Article I, Section 4, of the Constitution of the State of Alabama, and the First Amendment of the Constitution of the United States.

8. The statute upon which the complaint is founded is unconstitutional, in that it seeks to restrict and restrain the freedom of speech of the individual and of the press on election day, contrary to the Constitution of the State of Alabama, Article I, Section 4.

9. The statute upon which the complaint is founded is unconstitutional, in that it seeks to restrict and restrain the freedom of speech of the individual and of the press on election day, contrary to the First Amendment to the Constitution of the United States.

10. The statute upon which the complaint is founded is unconstitutional, in that it attempts to restrain or abridge the freedom of speech under the police powers of the State, contrary to the Constitution of the State of Alabama, Article I, Sections 4 and 6, and Amendments One and Fourteen of the United States Constitution.

[fol.13] 11. The provisions of the statute upon which the complaint is founded are so vague and indefinite and uncertain in regard to what might constitute solicitation or electioneering on election day that it restrains the individual and the press from exercising their rights of freedom of speech under the Constitution of the State of Alabama, Article I, Sections 4 and 6, and of the First and Fourteenth Amendments of the Constitution of the United States, and said statute is void.

12. The statute upon which the complaint is founded is vague and indefinite as to its definition of "soliciting or electioneering" and is unconstitutional and void under Article I, Sections 4 and 6 of the Constitution of the State of Alabama, and the First and Fourteenth Amendments

of the Constitution of the United States. It affirmatively appears in said complaint that defendant is charged with "soliciting or electioneering on election day" by publishing or causing to be published in a newspaper of general circulation in the City of Birmingham an editorial, said editorial being set forth in words and figures in the complaint, and said editorial discloses news items of public interest and fair comment upon the same, and the defendant is protected under the rights granted under Article I, Sections 4 and 6 of the Constitution of the State of Alabama, and under the First and Fourteenth Amendments of the Constitution of the United States, to report the news and make fair comment upon the same, the statute abridging or restricting the right of the defendant to publish the news with fair comment upon the same being void and unconstitutional.

13. The act upon which the complaint is founded is so vague and uncertain as to violate the Fourteenth Amendment of the Constitution of the United States, in that it makes unlawful and a criminal act for any person to solicit or electioneer on election day, without defining or specifying what act or acts constitute solicitation or electioneering, and it affirmatively appearing that the act abridges and [fol. 14] restrains the freedom of speech of all persons in the State of Alabama on election day in speaking of or referring to any candidate or proposition that is being voted upon.

14. The act upon which the complaint is founded is so vague and uncertain as to violate Article I, Sections 4 and 6, of the Constitution of the State of Alabama, in that it makes unlawful and a criminal act for any person to solicit or electioneer on election day without defining or specifying what act or acts constitute solicitation or electioneering, and it affirmatively appearing that in the ordinary pursuits of life, the act abridges and restrains the freedom of speech of all persons in the State of Alabama on election day in speaking of or referring to any candidate or proposition that is being voted upon.

15. The act upon which the complaint is founded is unconstitutional and void as being contrary to the due process clause of the Fourteenth Amendment to the United States Constitution, in that it fails to set forth sufficient guidance to those who would be law-abiding, as to what constitutes unlawful solicitation or electioneering.

16. Title 17, Section 285, Code of Alabama 1940, on which the complaint is founded, unduly limits the freedom of the press and the freedom of speech in violation of Article I, Section 4, of the Constitution of the State of Alabama, and that portion of said Corrupt Practice Act is void.

17. It affirmatively appears in said complaint that the statute upon which the complaint is founded is too broad in scope and unduly limits the freedom of the press and the freedom of speech in violation of the Constitution of the State of Alabama, Article I, Sections 4 and 6.

[fol. 15] 18. For that this Court has no jurisdiction over said proceedings, in that the statute or Act upon which the complaint is founded is void as being unconstitutional in violation of the provisions of Article I, Sections 4 and 6, of the Constitution of the State of Alabama.

19. It affirmatively appears in said complaint that the statute upon which the complaint is founded is invalid, as it unduly restricts the freedom of speech and of the press, contrary to the provisions of the Constitution of the State of Alabama, Article I, Sections 4 and 6, in that it is not set forth or shown wherein solicitation or electioneering on election day corrupts the public morals or is against the public policy, or would create a situation dangerous to public safety.

20. It affirmatively appears from the complaint that the statute upon which the complaint is based seeks to restrict or restrain a person from soliciting or electioneering on election day and it affirmatively appears in said complaint that defendant did publish an editorial in a newspaper of general circulation, which editorial being set forth in the

complaint shows that the same was a news item of public interest and fair comment on the same and was not against public policy, public morals or public safety, and the facts as set forth in said complaint as applied to the defendant disclose that the portion of the act upon which the complaint is founded is unconstitutional and void as an abridgment of the rights of the defendant to free speech as guaranteed by the Article I, Section 4 of the Constitution of the State of Alabama and the First Amendment of the United States Constitution.

21. It affirmatively appears from the complaint that the charge against the defendant is based upon an alleged violation of that portion of the statute or Act of the State of Alabama which would restrain or prohibit the defendant from expressing his opinion as editor of a newspaper, and from printing matters of public interest in a newspaper [fol. 16] of general circulation; that said statute or Act upon which the complaint is founded constitutes an abridgment or restraint on free speech and dissemination of news in a newspaper of general circulation; that that portion of said statute is unconstitutional and void in that it affirmatively appears in said complaint that defendant is charged with writing and distributing an editorial on matters of general public interest with fair comment upon the same; and that the statute or Act upon which the complaint is founded is unconstitutional and void.

22. It affirmatively appears that the statute upon which the complaint is founded seeks to restrict and restrain the freedom of speech and of the press in attempting to restrain any person from soliciting without defining the word "solicit", or from electioneering, without defining the word "electioneering", on election day, and would thus curtail the freedom of speech and the press restraining any person speaking to another person on election day, of, about, or concerning the candidate or the proposition being voted upon, and that said statute or act is void under the Constitution of the State of Alabama, Article I, Sections

4 and 6, and of the First and Fourteenth Amendments of the United States Constitution.

23. It affirmatively appears that the statute or Act upon which the complaint is founded does not adequately define "solicitation and electioneering" to inform a person accused of violation of that portion of the statute or act, and it affirmatively appears that defendant, an editor of a newspaper of general circulation, wrote an editorial on matter of public interest with fair comment upon the same, and that the writing, publishing or circulation of said editorial upon matters of public interest did not constitute solicitation or electioneering within the terms defined by the statute or Act; the statute or Act is unconstitutional and void as to abridge the rights of the defendant of freedom [fol. 17] of speech as guaranteed by the First Amendment of the Constitution of the United States and Article I, Sections 4 and 6, of the Constitution of the State of Alabama.

24. It affirmatively appears that the statute upon which the complaint is founded is an attempt by the state to obstruct the freedom of speech and of the press and assembly as guaranteed by Article I, Section 4, of the Constitution of the State of Alabama, and the First Amendment of the United States Constitution.

25. It affirmatively appears that said complaint does not charge an act which would create a reasonable apprehension of danger to organized society or corrupt the morals of society. Article I, Section 4, of the Constitution of the State of Alabama, states:

"That no law shall ever be passed to curtail or restrict the liberty of speech or of the press and any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

It affirmatively appears that the complaint seeks to curtail or restrain the liberty of speech or of the press, contrary

to the said Article I, Section 4, of the Constitution of the State of Alabama, and that the statute or Act upon which the complaint is founded is void, and this Court has no jurisdiction over said proceedings.

26. It affirmatively appears that the application of Title 17, Section 285, Code of Alabama 1940, to this defendant under the facts set forth in the complaint is unconstitutional deprivation of the rights of the defendant to freedom of speech and expression as guaranteed by Article I, Sections 4 and 6 of the Constitution of the State of Alabama, and by the First and Fourteenth Amendments of the Constitution of the United States.

27. For that it affirmatively appears from the facts set forth in the complaint that Title 17, Section 285, of the Code of Alabama 1940, is not applicable to the writing and publishing of an editorial in a newspaper of general circulation [fol. 18] and that that portion of the statute or Act as applied to the facts set forth in the complaint is an unconstitutional deprivation of the rights of the defendant as to freedom of speech, of press and assembly in violation of the amendments One and Fourteen of the United States Constitution and Article I, Sections 4 and 6, of the Constitution of the State of Alabama.

28. For that it affirmatively appears from the facts alleged in the complaint as being a violation of Title 17, Section 285, Code of Alabama 1940, that said statute or Act constitutes an abridgment or restraint of the defendant's rights of freedom of speech and of press, and that portion of said act is unconstitutional, null and void, as being contrary to the rights granted the defendants under the First and Fourteenth Amendments of the United States Constitution, and Article I, Sections 4 and 6 of the Constitution of the State of Alabama.

29. It affirmatively appears from said complaint that that portion of the statute, Title 17, Section 285, Code of Alabama 1940, as applied to the facts alleged in the

complaint is unconstitutional, null and void, in that it is deprivation of the rights of the defendant by abridgment of the defendant's rights of freedom of speech and of the press as guaranteed by Amendments One and Fourteen of the Constitution of the United States, and of Article I, Sections 4 and 6, of the Constitution of the State of Alabama.

30. It affirmatively appears from the complaint that that portion of the statute or Act upon which the complaint is founded is unconstitutional, null and void, as applied to the defendant in this case upon the facts alleged in the complaint, in that it is an abridgment and violation of defendant's rights of freedom of speech and of press, and the writing and publishing of an editorial in a newspaper [fol. 19] of general circulation is a right guaranteed under the First Amendment of the Constitution of the United States, and Article I, Section 4, of the Constitution of the State of Alabama.

31. It affirmatively appears that the application of that portion of the statute or Act, Title 17, Section 285, of the Code of Alabama 1940, under the facts alleged in this complaint is an unconstitutional attempt to restrict the freedom of press and of speech, and said statute is void as being in violation of the constitutional rights so guaranteed by the First Amendment of the Constitution of the United States, and Article I, Section 4 of the Constitution of the State of Alabama.

32. So much of said statute or Act, Title 17, Section 285, Code of Alabama 1940, that attempts to restrict the writing and distributing of news and fair comment upon the same is in violation of Article I, Section 4, of the Constitution of the State of Alabama, and the First Amendment to the United States Constitution.

33. It affirmatively appears in said complaint that the defendant wrote an editorial on a matter of general news

interest and comment upon the same, publishing and distributing said editorial in a newspaper of general circulation, which newspaper may be purchased by parties desiring to pay the price of the same, and so much of said statute or Act, Title 17, Section 285, Code of Alabama 1940, that attempts to abridge or restrict or restrict or curtail the liberty of speech or of the press is void, being in violation of Article I, Section 4, of the Constitution of the State of Alabama, and the First Amendment of the United States Constitution.

Kenneth Perrine, Attorney for Defendant

Leader, Tenenbaum, Perrine & Swedlaw, 933 Bank for Savings Building, Birmingham, Alabama.

[fol. 20]

IN THE JEFFERSON COUNTY CRIMINAL COURT

Honorable Francis Thompson, Judge Presiding

STATE OF ALABAMA

VS.

JAMES E. MILLS

JUDGMENT ENTRY—December 26, 1962

This the 26th day of December 1962, came Emmett Perry, Solicitor of the Tenth Judicial Circuit of Alabama, who prosecutes for the State of Alabama, and also came the defendant in his own proper person and by attorney, and the State of Alabama having filed on November 28, 1962, an amendment to the original complaint in this cause and the defendant on said date having filed a motion to dismiss and quash said complaint as last amended, it is ordered and adjudged by the court that the said motion

to dismiss and quash is hereby overruled; and the defendant having also filed on November 28, 1962, demurrer to the complaint as last amended and said demurrer being considered by the Court it is ordered and adjudged by the Court that said demurrer is sustained. This action of the court is based solely on the grounds of demurrer challenging the constitutionality of Title 17, Section 285, Code of Alabama 1940, as being in violation of Article I, Section 4, and Section 6, of the Constitution of Alabama and the First Amendment to the Constitution of the United States and the Fourteenth Amendment to the Constitution of the United States. The State of Alabama gives notice of appeal under Code of Alabama of 1940, Title 15, Section 370, and defendant held under present bond pending decision of Supreme Court of Alabama.

December 26, 1962.

Thompson, Judge.

IN THE JEFFERSON COUNTY CRIMINAL COURT

Citation of Appeal to Supreme Court—December 26, 1962

To James E. Mills, Defendant or Leader, Tenenbaum, Perrine and Swedlaw, Attorneys for Defendant—Greetings:

[fol. 21] Whereas, the State of Alabama has taken an appeal from the judgment of the Jefferson County Criminal Court in the cause wherein the State of Alabama is plaintiff and James E. Mills is defendant.

Now, you are, therefore, cited to appear at the next term 1963 of the Supreme Court of Alabama, to defend on said appeal, if you shall think proper to do so.

Witness my hand, this 26 day of December, 1962.

K. K. Holmes, Clerk, Jefferson County Criminal Court.

Sheriffs Return

Executed this 26 day of December 1962 on Leader, Tenenbaum, Perrine and Swedlaw, Attorneys of Record by leaving a copy of within with Kenneth Perrine, one of said attorneys.

Holt A. McDowell, Sheriff, Jefferson County, Alabama, By R. E. McLean, Deputy Sheriff.

Clerk's Certificate (omitted in printing).

[fol. 22]

IN THE JEFFERSON COUNTY CRIMINAL COURT

ASSIGNMENT OF ERROR

Comes the Appellant in this cause and assigns as error the following grounds:

1. For that the Court erred in sustaining the demurrer to the complaint as last amended on the ground that Title 17, Section 285, Code of Alabama 1940 is in violation of Article I, Section 4 of the Constitution of the State of Alabama (R.P. II) Judgment Entry (R.P. 19).

2. For that the Court erred in sustaining the demurrer to the complaint as last amended on the ground that Title 17, Section 285, Code of Alabama 1940 is in violation of Article I, Section 6 of the Constitution of the State of Alabama (R.P. II) Judgment Entry (R.P. 19).

3. For that the Court erred in sustaining the demurrer to the complaint as last amended on the ground that Title 17, Section 285, Code of Alabama 1940 is in violation of the First Amendment to the Constitution of the United States.

4. For that the Court erred in sustaining the demurrer to the complaint as last amended on the ground that Title 17, Section 285, Code of Alabama 1940 is in violation of the

Fourteenth Amendment to the Constitution of the United States.

**Emmett Perry, Solicitor for Tenth Judicial Circuit
of Alabama.**

I hereby certify that I have served a copy of the foregoing Assignment of Error on the Honorable Kenneth Perrine, one of the Attorneys of Record for the Appellee, this the 26 day of December, 1962.

**Emmett Perry, Solicitor for Tenth Judicial Circuit
of Alabama.**

[fol. 23] There is no error in the record.

Kenneth Perrine, Of Counsel for the Defendant.

[fol. 24]

IN THE JEFFERSON COUNTY CRIMINAL COURT

No. 53975

THE STATE

vs.

JAMES E. MILLS

CLERK'S CERTIFICATE

I, K. K. Holmes, Clerk of the Jefferson County Criminal Court, do hereby certify that the above stated cause was tried and determined in this Court on the 26 day of December, 1962, and demurrer was sustained to the complaint as last amended solely on the grounds of demurrer challenging the constitutionality of Title 17, Section 285, Code of Alabama 1940 as being in violation of Article 1, Section 4, and Section 6, of the Constitution of Alabama and the First Amendment to the Constitution of the United States

and the Fourteenth Amendment to the Constitution of the United States. The State of Alabama gives notice of appeal under Code of Alabama, 1940, Title 15, Section 370 and defendant held under present bond pending decision of Supreme Court of Alabama.

Witness my hand and the seal of this court, this the 26 day of December, 1962.

K. K. Holmes, Clerk of the Jefferson County Criminal Court.

[fol. 25]

IN THE SUPREME COURT OF ALABAMA

6th Div. 950

STATE OF ALABAMA

v.

JAMES E. MILLS

JEFFERSON COUNTY CRIMINAL COURT No. 53975

ARGUMENT AND SUBMISSION—April 25, 1963

Come the parties by attorneys and argue and submit this cause for decision.

[fol. 26]

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1964-65

6 Div. 950

STATE OF ALABAMA

v.

JAMES E. MILLS

APPEAL FROM JEFFERSON COUNTY CRIMINAL COURT

OPINION—March 4, 1965

Livingston, Chief Justice.

This is an appeal by the State of Alabama, under and by virtue of the provisions of Sec. 370, Title 15, Code of Alabama 1940, from a judgment of the Jefferson County Criminal Court sustaining a demurrer to an amended criminal complaint, on the grounds that the statute on which the said criminal complaint was based, Sec. 285, Title 17, Code of 1940, is unconstitutional.

[fol. 27] The Birmingham Post-Herald is a daily newspaper of general circulation, published in the City of Birmingham, Alabama. James E. Mills, the appellee, is the editor of that newspaper.

On November 6, 1962, an election was held in the City of Birmingham, Alabama, to determine whether or not the City of Birmingham was to retain the then existing commission form of city government or to replace it by another form.

In the November 6, 1962 issue of the Birmingham Post-Herald, which was distributed to purchasers of and subscribers to that newspaper, was an editorial which was authored by Mr. Mills, in words and figures as follows:

"Do We Need Further Warning?"

"Mayor Hanes' proposal to buy the votes of city employees with a promise of pay raises which would cost the taxpayers nearly a million dollars a year was enough to destroy any confidence the public might have had left in him.

"It was another good reason why the voters should vote overwhelmingly today in favor of Mayor-Council government.

"Now Mr. Hanes, in his arrogance, proposes to set himself up as news censor at City Hall and 'win or lose' today he says he will instruct all city employees under him to neither give out news regarding the public business with which they are entrusted nor to discuss it with reporters either from the Post-Herald or the News.

[fol. 28] "In other words, it is Mr. Hanes' plan to give to the people of Birmingham only the news he wants them to have and only in the light in which he sees fit to present it.

"The mayor makes a mistake, however, if he thinks he can black out news from City Hall. He is mistaken, too, if he thinks the citizens of Birmingham will let him get away with so brazen an attempt to deny them ready access to what they have a right to know about all that goes on at City Hall.

"Do the people of Birmingham need a more serious warning?

"If Mayor Hanes displays such arrogant disregard of the public's right to know on the eve of the election what can we expect in the future if the City Commission should be retained?

"Let's take no chances.

"Birmingham and the people of Birmingham deserve a better break. A vote for Mayor-Council government will give it to them."

Section 285 of Title 17, Code of 1940, reads as follows:

"Corrupt practices at elections enumerated and defined.—It is a corrupt practice for any person on any election day to intimidate or attempt to intimidate an elector or any of the election officers; or, obstruct or hinder or attempt to obstruct or hinder, or prevent [fol. 29] or attempt to prevent the forming of the lines of the voters awaiting their opportunity or time to enter the election booths; or to hire or to let for hire any automobile or other conveyance for the purpose of conveying electors to and from the polls; or, to do any electioneering or to solicit any votes or to promise to cast any votes for or against the election or nomination of any candidate, or in support of or in opposition to any proposition that is being voted on on the day on which the election affecting such candidates or propositions is being held."

Based on the foregoing editorial, a citizen swore to a criminal complaint charging Mills with violation of Sec. 285 of Title 17, *supra*.

The criminal complaint as amended charged that the publication and distribution of the editorial constituted "electioneering" or "soliciting votes in support of a proposition which was being voted on on the day that the election affecting such proposition was being held."

A demurrer to the amended complaint was filed by the defendant Mills, appellee. Each ground of the demurrer challenged the constitutionality of said Sec. 285 of Title 17, *supra*. The demurrer to the complaint as amended was sustained, the judgment specifying that the statute was unconstitutional as violative of (1) Article 1, Sec. 4 of the Constitution of Alabama 1901, (2) Article 1, Sec. 6 of the Constitution of Alabama 1901, (3) the First Amendment [fol. 30] to the Constitution of the United States, and (4) The Fourteenth Amendment to the Constitution of the United States.

These constitutional provisions read as follows:

Article 1, Secs. 4 and 6, Constitution of Alabama 1901:

"Section 4. That no law shall ever be passed to curtail or restrain the liberty of speech or of the press; and any person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

"Section 6. That in all criminal prosecutions, the accused has a right to be heard by himself and counsel * * * and he shall not be compelled to give evidence against himself, nor be deprived of life, liberty, or property, except by due process of law; * * *."

The First Amendment, Constitution of the United States of America, reads, in pertinent part, as follows:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; * * *."

The Fourteenth Amendment, Constitution of the United States of America, reads, in pertinent part, as follows:

"* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law * * *."

[fol. 31] The state appealed.

The principles by which courts are guided when it is sought to strike down an act of the legislature as violative of the Constitution are clearly and concisely stated in *Alabama State Federation of Labor v. McAdory*, 246 Ala. 1, 18 So. 2d 810, where the late Chief Justice Gardner said:

"At the outset reference may be made, as is often done, to the principles by which courts are guided

when it is sought to strike down as violative of the constitution a legislative act. Uniformly, the courts recognize that this power is a delicate one, and to be used with great caution. It should be borne in mind, also, that legislative power is not derived either from the state or federal constitutions. These instruments are only limitations upon the power. Apart from limitations imposed by these fundamental charters of government, the power of the legislature has no bounds and is as plenary as that of the British Parliament. It follows that, in passing upon the constitutionality of a legislative act, the courts uniformly approach the question with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a coordinate branch of the government. All these principles are embraced in the simple statement that it is the recognized duty of the court to sustain the act unless it is clear beyond [fol. 32] reasonable doubt that it is violative of the fundamental law. *State ex rel. Wilkinson v. Murphy*, 237 Ala. 332, 186 So. 487, 121 A.L.R. 283.

"Another principle which is recognized with practical unanimity, and leading to the same end, is that the courts do not hold statutes invalid because they think there are elements therein which are violative of natural justice or in conflict with the court's notions of natural, social, or political rights of the citizen, not guaranteed by the constitution itself. Nor even if the courts think the act is harsh or in some degree unfair, and presents chances for abuse, or is of doubtful propriety. All of these questions of propriety, wisdom, necessity, utility, and expediency are held exclusively for the legislative bodies, and are matters with which the courts have no concern. This principle is embraced within the simple statement that the only question for the court to decide is one of power, not of expediency or wisdom. 11 Am. Jur. pp. 799-812; *A.F. of L. v. Reilly*, District Court of Colorado, 7 Labor Cases No. 61,761.

"The broad doctrine as thus announced is sustained by the weight of authority, both in the Federal and the state courts. For our own State the cases of *City of Ensley v. Simpson*, 166 Ala. 366, 52 So. 61, and *State v. Ala. Fuel & Iron Co.*, 188 Ala. 487, 66 So. [fol. 33] 169, L.R.A. 1915A, 185 Ann. Cas. 1916E, 752, furnish apt illustrations. And as for the Federal courts, reference may be made to *Flint v. Stone Tracy Co.*, 220 U.S. 107, 31 S. Ct. 342, 55 L. Ed 389, Ann. Cas. 1912B, 1312."

Our cases are legion to the effect that all presumptions and intendments should be indulged in favor of the validity of a statute, and its unconstitutionality should appear beyond a reasonable doubt before it will be held invalid. Statutes must be construed, if fairly possible, so as to avoid not only a conclusion that it is unconstitutional, but also grave doubts on that score. Nat'l Reporter System, Constitutional Law, Key No. 48; Vol. 4, Alabama Digest, Constitutional Law, Key No. 48, pp. 710-714; *Constantine v. U. S.*, 75 Fed 2d 928, 55 S. Ct. 922, 295 U. S. 730, 79 L. Ed 1679; 56 S. Ct. 223; *State v. Skeggs*, 154 Ala. 249, 46 So. 268; *Anniston Mfg. Co. v. Davis*, 57 S. Ct. 816, 81 L. Ed 1143, 89 F. 2d 1012, 58 S. Ct. 3, 82 L. Ed 599; *Stone v. State*, 233 Ala. 239, 171 So. Rep. 362.

The legislature may enact laws reasonably regulating elections, and the state may under its "police power" enact laws which interfere indirectly and to a limited extent with freedom of speech or the press, if reasonably necessary for protection of the general public. 16 C.J.S., p. 1157, Par. 213(23); *Alabama State Federation of Labor v. McDory*, supra; Nat'l Reporter Systems, Elections, Key Nos. 228 and 231; *La Follette v. Kohler*, 69 A.L.R. 376; *Ex parte Hawthorne* (Fla.), 156 So. 619 (623), 96 A.L.R. 572; *Branton v. State*, 218 S. W. 2d 690, 214 Ark. 861, 94 L. [fol. 34] Ed 538, 70 S. Ct. 155, 338 U. S. 878; 18 Am. Jur., p. 336, par. 235, "Elections"; *Barton v. City of Bessemer*, 234 Ala. 20, 173 So. 626; *In re Mack*, 126 Atl. 2d 679 (681), 386 Pa. 251.

Freedom of speech or freedom of the press is susceptible to only such restrictions as are necessary to prevent grave and immediate danger to interests which the state may lawfully protect. *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 63 S. Ct. 1178, 1186.

A full exercise of the right of citizenship includes, not only the right to vote, by those possessing the prescribed qualifications, but the right to assemble, the right of free speech, the right to present one's views to one's own fellow citizens, but *these rights are subject to restraint by reasonable regulation*.

In numerous cases in this court, it has been made as plain as it is possible to make it that the regulation of these rights is subject to constitutional limitations, and, if unreasonable, must be declared void. Laws of this kind lie within the police power field and are subject to the same constitutional limitations as are laws dealing with the right to life, liberty and property. The right of the legislature to exercise the police power is not referable to any single provision of the Constitution. It inheres in and springs from the nature of our institutions, and so the limitations upon it are those which spring from the same source as well as those expressly set out in the Constitution. But legislative action is always subject to the test of *reasonableness*. [fol. 35] A review of all the cases in which courts have considered the reasonableness of laws enacted by legislatures in the exercise of the police power would leave us about where we began.

A clear distinction must be drawn between cases passing upon the reasonableness of an act of the legislature and cases having to do with the reasonableness of municipal ordinances, the reasonableness of classifications, etc. The fundamental principles governing the exercise of the police power by the legislature have been considered many times by this court. A court may not declare a law void for unreasonableness because it is unwise or prescribes a limitation more restrictive than the court thinks proper. If a law is germane to the subject with which it deals, that is, is not

passed for the purpose of securing some ulterior objective, and is in fact within the field of regulation, if it tends to conserve rather than destroy, it is beyond the scope of judicial interference.

There is no yardstick by which reasonableness may be measured with mathematical certainty. This court holds in accordance with the great weight of authority that a law cannot be held to be invalid because unreasonable, unless and until it appears beyond reasonable controversy that it unnecessarily impairs to the point of practical destruction a right safeguarded by the Constitution. As has already been pointed out, the law under consideration lies within the police power field and impairs only the right of free speech, which includes the right to write and publish one's views.

[fol. 36] Does a law which prohibits "soliciting votes" or "electioneering" on election day so unreasonably invade the constitutional right of free speech or free press as to be void? In order to entitle the court to declare the law void on that ground it is not sufficient that the restriction is greater or less than the court might think wise. It is not sufficient that it may appear to the court that it may operate as a restraint upon the information and education of the electorate. Before the act can be set aside, it must appear beyond reasonable controversy to the court that the law in question tends to destroy rather than conserve and is not germane to the purpose sought to be achieved.

Out of the facts the law arises, and we come now to the application of the foregoing principles to the facts of the case at hand.

The statute declares it a corrupt practice for any person on any election day to do "any electioneering or to solicit any votes * * * in support of or in opposition to any proposition that is being voted on on the day on which the election affecting such candidates or propositions is being held."

There can be no sort of doubt that the editorial distributed on the election date violates the Corrupt Practice Act

of soliciting votes or electioneering on election day. The editorial for which appellee was responsible stated:

"It was another good reason why the voters should *vote overwhelmingly today* in favor of Mayor-Council government," and further

[fol. 37] "Let's take no chances. Birmingham and the people of Birmingham deserve a better break. A *vote* for Mayor-Council government will give it to them." (Emphasis supplied.)

The real question in the case is: Did the Alabama Legislature exercise reasonable use of police power, in an effort to maintain orderly elections, in limiting full free speech and freedom of the press, by denying to all persons the right to solicit votes, or electioneer, while the electorate recorded their wishes at the polling booths on election day?

We are of the opinion that it did. In deciding whether any police regulation is reasonable, the courts must look at all the surrounding circumstances. If the legislature thought such regulations are necessary and reasonable, the courts have not stricken same as violative of constitutional rights, because the courts thought of better means, in their judgment, of handling the danger. Generally speaking, courts have stricken such legislative acts only if they have the effect, under all the circumstances, of practically destroying the constitutional rights.

The pertinent statute being within the field in which the legislature may properly and constitutionally exercise the police power, the act does not so clearly appear to be an unwarrantable interference with the guaranteed constitutional right that it is within the power of the court to declare it void; on the contrary, the restriction, everything considered, is within the field of reasonableness.

[fol. 38] Appellee cites the case of *Barton v. City of Bessemer*, 234 Ala. 20, 173 So. 626. But as we read that case, it supports the principles we have applied in this case. We quote the following from it:

"It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom.

"Reasonably limited, it was said by Story in the passage cited, this freedom is an inestimable privilege in a free government; without such limitation, it might become the scourge of the republic."

It is undeniable that it is reasonably necessary that all elections be conducted in an orderly fashion. It is a salutary legislative enactment that protects the public from confusive last-minute charges and countercharges and the distribution of propaganda in an effort to influence voters on an election day; when as a practical matter, because of lack of time, such matters cannot be answered or their truth determined until after the election is over.

[fol. 39] Appellee argues that Sec. 285, Title 17, Code, should be declared void and unconstitutional for uncertainty. We cannot agree. The cases cited in support of the argument are readily distinguishable from the instant case. The provisions of the Corrupt Practice Act, as applied to the facts of this case, are clear, unambiguous and not an unreasonable limitation upon free speech, which includes free press.

Reversed and Remanded.

Simpson, Merrill and Hardwood, JJ., concur.

[fol. 40]

IN THE SUPREME COURT OF ALABAMA

6 Div. 950

STATE OF ALABAMA

v.

JAMES E. MILLS

JEFFERSON COUNTY CRIMINAL COURT

JUDGMENT—March 4, 1965

Come the parties by attorneys and the record and matters therein assigned for errors being argued and submitted and duly examined and understood by the Court, it is considered that that portion of the lower court's judgment refusing to quash the bill of complaint as last amended, be affirmed.

It Is Further Ordered and Adjudged that that portion of the lower court's judgment sustaining the demurrers to the bill of complaint, as last amended, be reversed and annulled; and the cause remanded to the lower court for further proceedings therein, not inconsistent with the opinion of this Court.

It Is Further Ordered and Adjudged that the Appellee, James E. Mills, pay the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

[fol. 41]

IN THE SUPREME COURT OF ALABAMA

[Title omitted]

APPLICATION FOR REHEARING—Filed March 18, 1965

To the Honorable Judges of the Alabama Supreme Court:

Comes the Appellee, James E. Mills, and applies to the Court to grant unto him a rehearing in the above styled cause and upon such rehearing, to set aside the opinion and judgment of the Court, made and entered in said cause on the 4th day of March, 1965; and upon such rehearing, to enter a judgment affirming the judgment of the Circuit Court of Jefferson County.

The Appellee respectfully urges in support of said application for rehearing the following:

1. The Court erroneously determined that a law enacted by the State of Alabama cannot be held to be invalid unless and until it appears beyond a reasonable controversy that it necessarily impairs to a point of practical destruction a right safeguarded by the Constitution.

2. The Court in its opinion erred in holding it to be a valid exercise of police power for the state to adopt that portion of Section 285, Title 17, Code of Alabama 1940, which made it a misdemeanor for any person "to do any [fol. 42] electioneering or soliciting votes for or against the election or nomination of a candidate or in support of or opposition to any proposition that is being voted on on the day the election affecting such candidate or proposition is being held." The wording of the statute being vague and giving no definition of what acts constitute electioneering or solicitation, and there being no limitation as to the time or place, no substantive evil exists which would constitute a clear or present danger of the obstruction of justice.

3. The Court erroneously held that the Alabama Legislature exercised reasonable use of police power in an effort

[File endorsement omitted]

to maintain orderly elections, in limiting full free speech and freedom of the press by denying all persons in the state the right to solicit votes or electioneer while the electorate recorded their wishes at the polling booths on election day, in the state or any subdivision therein.

4. The Court erred in holding that Section 285, Title 17, Code of Alabama 140, was " • a salutary legislative enactment which protects the public from confusive last minute charges • ", when electioneering or solicitation, or last minute charges, do not constitute a substantive evil creating a clear danger, imminent and immediate, necessitating the abridgment of the unconditional rights of free speech and free press guaranteed in the First and Fourteenth Amendments to the Constitution of the United States, and Article I, Sections 4 and 6, of the Alabama Constitution.

5. The Court erred in failing to define the acts which would constitute electioneering or solicitation on election day.

6. The Court erred in holding that the publication of an article in a newspaper of general circulation on the day of election, containing news of general interest and fair comment thereon concerning the proposition to be voted on that day, constituted electioneering or solicitation within [fol. 43] the provisions set forth in Section 285, Title 17, Code of Alabama 1940.

7. The Court erred in holding that that portion of Section 285, Title 17, Code of Alabama 1940, which made it a corrupt practice and a misdemeanor to solicit or electioneer on election day, was constitutional and not void for uncertainty.

8. The Court erred in holding that Appellee was guilty of electioneering or solicitation on election day within the provisions of Section 285, Title 17, Code of Alabama 1940, by his authoring and publishing an article containing news items of public interest, and fair comment thereon, publishing the same in a newspaper of general circulation; which

newspaper was purchased by subscribers and the general public.

Appellee further respectfully applies to the Court and requests that the mandate and certificate to the court below be recalled and withdrawn, pending final disposition of this application for rehearing.

Appellee hereby requests this Honorable Court to allow oral argument for application of rehearing this day filed, and set an appropriate date for such oral argument.

Appellee respectfully submits herewith and attaches hereto a brief and argument in support of his said application for rehearing.

Leader, Tenenbaum, Perrine & Swedlaw, By Kenneth Perrine, Attorneys for Appellee.

Leader, Tenenbaum, Perrine & Swedlaw, 933 Bank for Savings Building, Birmingham, Alabama 35203.

[fol. 44] Certificate of Service (omitted in printing).

[fol. 44a]

IN THE SUPREME COURT OF ALABAMA

October Term, 19.....

CERTIFICATE OF RECALL—March 18, 1965

To the Clerk of the Jefferson County Criminal Court

Greeting:

Whereas, in the matter of State of Alabama, Appellant, vs. James E. Mills, Appellee, recently pending in the Supreme Court of Alabama, on appeal from the said Court of Jefferson County, our Supreme Court did on the 4th day of March, 1965, render a Judgment of Reversal and Remandment in said cause; and,

Whereas, a certificate of such action of the Supreme Court was duly issued to you, and thereafter an application for a rehearing of said cause was filed in this Court on the 18th day of March, 1965:

Now, it is hereby certified, that our Supreme Court, or one of the Justices thereof, did, on the 18th day of March, 1965, order that the said certificate be recalled. And you will accordingly return the same to this office at once, together with copy of the opinion in said cause issued to you.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, at the Judicial Building, this the 18 day of March, 1965.

J. Render Thomas, Clerk of the Supreme Court of Alabama.

[fol. 45]

IN THE SUPREME COURT OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—
July 15, 1965

It Is Ordered that the application for rehearing filed on March 18, 1965, be and the same is hereby overruled.

[fol. 46]

IN THE SUPREME COURT OF THE STATE OF ALABAMA
6 Div. No. 950

STATE OF ALABAMA, Appellant,

vs.

JAMES E. MILLS, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed July 26, 1965

I

Notice is hereby given that James E. Mills, Appellee above named, hereby appeals to the Supreme Court of the

United States from the final order of the Supreme Court of the State of Alabama, entered on the 15th day of July, 1965, overruling the application for re-hearing of the decision of the Supreme Court of the State of Alabama entered on March 4, 1965, reversing the judgment of the Jefferson County Criminal Court entered on the 26th day of December, 1962.

This appeal is taken pursuant to 28 U.S.C.A. 1257.

Appellee was charged with violation of Section 285, Title 17, Code of Alabama, 1940, Corrupt Practices Act. The Jefferson County Criminal Court sustained demurrers to the complaint, as amended, on the grounds that Section 285, Title 17, Code of Alabama, 1940, was violative of Article I, Section 4 and Section 6, of the Constitution of the State of Alabama, and of the First and Fourteenth Amendments to the Constitution of the United States. The Supreme Court of Alabama, in its opinion issued March 4, 1965, reversed the decision of the lower court on the grounds that [fol. 47] Section 285, Title 17, Code of Alabama, 1940, was not violative of Article I, Section 4 and Section 6, of the Constitution of the State of Alabama of 1901, nor of the First and Fourteenth Amendments to the Constitution of the United States.

II

The Clerk will prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, including in said transcript:

1. The transcript of the record of appeal from the Jefferson County Criminal Court to the Supreme Court of Alabama.
 - (a) The original complaint and warrant of arrest filed in the Jefferson County Criminal Court on November 13, 1962.
 - (b) Amendment to complaint filed November 28, 1962.

- (c) Defendant James E. Mills' motion to dismiss and quash the complaint as amended, filed November 28, 1962.
 - (d) Demurrers of defendant to the complaint as amended, filed November 28, 1962.
 - (e) The judgment entry in the Jefferson County Criminal Court, dated December 26, 1962.
2. Opinion of the Supreme Court of Alabama, dated March 4, 1965.
 3. Application for re-hearing, filed March 18, 1965.
 4. Recall of the mandate and certificate by the Supreme Court of Alabama.
 5. Order of the Supreme Court of Alabama denying application for re-hearing, dated July 15, 1965.
 6. Order of the Supreme Court of Alabama recalling the certificate remanding said case to the Jefferson County Criminal Court, dated the 21st day of July, 1965.
 7. This notice of appeal.

III

The following questions are presented by this appeal:

- [fol. 48] 1. Is Section 285, of Title 17, Code of Alabama, 1940, unconstitutional, being violative of the First and Fourteenth Amendments to the United States Constitution?
2. Is Section 285, of Title 17, Code of Alabama, 1940, unconstitutional and void, being violative of due process of law as guaranteed under the Fourteenth Amendment to the United States Constitution?
3. Is Section 285, of Title 17, Code of Alabama, 1940, unconstitutional, unduly restraining the freedom of speech and press in violation of the First Amendment to the United States Constitution?

4. Is Section 285, of Title 17, Code of Alabama, 1940, as applied in this case, repugnant to the guarantee of liberty and freedom of speech and press contained in the First and Fourteenth Amendments to the United States Constitution, and Article I, Section 4 and Section 6, Declaration of Rights of the Constitution of the State of Alabama of 1901?

Kenneth Perrine, Attorney for James E. Mills,
Appellee.

Leader, Tenenbaum, Perrine & Swedlaw, 933 Bank for
Savings Building, Birmingham, Alabama 35203.

Of Counsel

Proof of Service Omitted in Printing

[fol. 50]

IN THE SUPREME COURT OF ALABAMA
SPECIAL TERM 1965

RECALL OF MANDATE AND CERTIFICATE—July 21, 1965

To the Clerk of the Jefferson County Criminal Court—

Greeting:

Whereas, in the matter of State of Alabama, Appellant, vs. James E. Mills, Appellee, recently pending in the Supreme Court of Alabama, on appeal from the said Criminal Court of Jefferson County, our Supreme Court did on March 4, 1965, render a judgment of reversal and remandment in said cause; and,

Whereas, a certificate of such action of the Supreme Court was duly issued to you, and thereafter an application for rehearing of said cause was filed in this Court on March 18, 1965, which said application was overruled on July 15, 1965;

And it appearing that the Defendant-Appellee is appealing to the Supreme Court of the United States, it is hereby certified that Honorable J. Ed Livingston, as Chief Justice of the Supreme Court of Alabama, did, on July 21, 1965, order that the said certificate be recalled pending the disposition of this cause by the Supreme Court of the United States. And you will accordingly return the same to this office at once, together with copy of the opinion in said cause issued to you.

Witness, Richard W. Neal, Deputy Clerk of the Supreme Court of Alabama, at the Judicial Building, In Montgomery, Alabama, this the 21st day of July, 1965.

Richard W. Neal, Deputy Clerk of the Supreme Court of Alabama.

[fol. 51] Clerk's Certificate (omitted in printing).

[fol. 52]

SUPREME COURT OF THE UNITED STATES

No. 597, October Term, 1965

JAMES E. MILLS, Appellant,

v.

ALABAMA.

Appeal from the Supreme Court of the State of Alabama.

ORDER POSTPONING JURISDICTION—December 6, 1965

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction in this case is postponed to the hearing of the case on the merits.